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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/862,688	05/22/2001	Dieter Mauer	0275M-260DVB	9681

7590 10/28/2002

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EXAMINER

OMGBA, ESSAMA

ART UNIT	PAPER NUMBER
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3726

DATE MAILED: 10/28/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.
09/862,688

Applicant(s)
Mauer et al.

Examiner
Essama Omgba

Art Unit
3726



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED Oct 16, 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid the abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

THE PERIOD FOR REPLY [check only a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on Oct 16, 2002. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see NOTE below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____

4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See attached remarks.

6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1-53

Claim(s) withdrawn from consideration: _____

8. ☐ The proposed drawing correction filed on _____ is a) ☒ approved or b) ☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____

10. ☐ Other: _____

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Response to Arguments

1. Applicant's arguments filed 10/16/2002 have been fully considered but they are not persuasive.
 2. Applicant should submit an argument under the heading "Remarks" pointing out disagreements with the examiner's contentions. Applicant must also discuss the references applied against the claims, explaining how the claims avoid the references or distinguish from them.
- The examiner introduced new grounds of rejection in the Office action of Paper No. 6 mailed on 6/18/2002 and maintained the same grounds of rejection in the subsequent Office action of paper No. 8 mailed on 7/10/2002. However Applicant has not responded to any of the rejections outlined in both office actions. Applicant submitted a supplemental response to the Office action of Paper No. 3 mailed on 11/07/2001. The supplemental response, which was received on 6/24/2002, contained only declarations from Applicant but did not understandably address the new grounds of rejection presented in the Office action of Paper No. 6 since Applicant mailed the supplemental response before receiving the Office action of Paper No. 6. The examiner responded to the declarations submitted by Applicant in the Office action of Paper No. 8 mailed on 7/10/2002. In that office action the examiner also maintained the rejections presented in the Office action of Paper No.6.

As of today Applicant has not responded to the grounds of rejection presented in both Office actions of Paper Nos. 6 and 8. Applicant's statement that "the prior traversal of the

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rejection as previously set forth in the prior responses to Paper No. 6" is maintained is non responsive since such traversal was never set forth. The examiner also disagrees with Applicant's argument that there is no suggestion or motivation to combine the references as suggested by the examiner. First of all the motivations are clearly outlined in the rejections presented in both Office actions of Paper Nos. 6 and 8. Secondly, all the references are in the field of Applicant's endeavor. Applicant has not specifically pointed out the deficiencies in the examiner's rejections. Therefore Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

Furthermore the examiner pointed out in the Office action of Paper No. 8 why the declarations filed on 6/17/2002 are ineffective to overcome the applied references and also why the translation of the Audi employee's declaration is not proper. However Applicant has chosen to ignore the examiner's arguments by not responding to them but instead has refiled a generic declaration signed on November 20, 2000 even though the present application was filed on May 22, 2001. None of the examiner's objections to the declarations filed on 6/17/2002 has been addressed.


In view of the above remarks, the examiner maintains that a *prima facie* case of obviousness has been established in the instant application.


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Contact Information

3. Official documents related to the instant application may be submitted to the Technology Center 3700 mail center by facsimile at (703) 305-3579/3580. Should Applicant desire to submit a DRAFT response to the Examiner by facsimile transmission, then Applicant should contact the Examiner at the number below for instructions concerning the transmission of DRAFT documents. Applicant is reminded to clearly mark any facsimile transmission as "DRAFT" if it is not to be considered as an official response.

4. Any inquiry concerning this communication should be directed to Examiner Essama Omgba at telephone number (703) 305-2915.

eo 
October 25, 2002


GREGORY M. VIDOVIKH
PRIMARY EXAMINER
